

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

MICHELLE TROTTER,

Plaintiff,

V.

7R HOLDINGS, LLC, LUIS A. RUBI
GONZALEZ, M/Y OLGA,

Defendants.

CIVIL CASE NO. 3:14-cv-0099

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

Action Filed : November 19, 2014

Trial Date : None set

Plaintiff, MICHELLE TROTTER, hereby alleges as follows:

JURISDICTION/VENUE

1. Plaintiff, MICHELLE TROTTER, is a resident of the State of Florida.

2. Plaintiff is informed and believes, and based thereupon alleges, that defendant, 7R
DINGS, LLC, LUIS A. RUBI GONZALEZ, are residents or business entities operating out of
Rico, and at the time of this incident, are, and were, operating sailing charters from the Island
Thomas, within the Territory of the United States Virgin Islands.

18 3. The M/Y OLGA is a vessel owned and operated by 7R HOLDINGS, LLC, LUIS A.
19 RUBI GONZALEZ, and, at the time of this incident, was operating from the Island of St. Thomas,
20 within the Territory of the United States Virgin Islands.

21 4. This suit herein arises and is within the Admiralty and Maritime jurisdiction of the
22 above-entitled court pursuant to the Jones Act, 46 U.S. Code § 30104, et seq., and under the
23 General Maritime Laws, and is for personal injuries and for damages and sums to be paid therefore
24 arising out of plaintiff's employment as a crew member aboard M/Y OLGA; and that Plaintiff,
25 MICHELLE TROTTER, is a seaman within the designation of persons permitted to sue herein
26 without furnishing bond, or pre-payment of, or making deposit to secure fees, and costs for entering
27 into and prosecuting suits conforming with the provision of 28 U.S. C. Section 1916.

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FIRST CAUSE OF ACTION
(Unseaworthiness)

5. Plaintiff realleges paragraph 1 through 4 and incorporates the same by reference as a part hereof as though fully set forth herein.

6. Plaintiff is informed and believes, and based thereupon alleges, that at all times herein mentioned, Defendants, 7R HOLDINGS, LLC, LUIS A. RUBI GONZALEZ, and each of them, owned, operated, maintained, entrusted, and controlled the vessel, M/Y OLGA, and at the time of this incident, was operating the vessel M/Y OLGA from the Island of St. Thomas, within the Territory of the United States Virgin Islands.

10 7. Plaintiff is further informed and believes, and based thereupon alleges that at the
11 present time or during the pendency of this suit, the above-named Defendant vessel will be in the
12 jurisdiction of this Court.

13 8. That at all times herein mentioned, plaintiff was employed on the vessel, owned by
14 the Defendants, and each of them, as a chef on board the M/Y OLGA, and was in fact a member of
15 the crew of the vessel; that this action is prosecuted by virtue of the provision of 46 U.S.C. Section
16 30104, et seq., and under the General Maritime Law.

17 9. That at all times herein, mentioned, there was and still is in force and effect an Act
18 of Congress known as the Merchant Marine Act, approved June 5, 1920, C.250, 41 State. 1007, 46
19 U.S.C. § 688, and codified on October 6, 2002, as 46 USC § 30104, otherwise known as the Jones
20 Act.

21 10. Plaintiff is informed and believes, and based thereupon alleges, that on or about
22 December 26, 2012, M/Y OLGA was engaged in maritime operations on navigable waters starting
23 in St. Thomas, United States Virgin Islands. The M/Y OLGA then proceeded to the Marriott at Scrub
24 Island in the British Virgin Islands, where the vessel tied up at the dock so that Plaintiff could get
25 certain spices for the vessel from the kitchen at Scrub Island. The stairs that Plaintiff was required
26 to traverse in order to discharge her duties as a chef aboard the M/Y OLGA had uneven rise and
27 runs, did not have a handrail and were in a dangerous condition so that persons using the stairs were
28 likely to misstep or sustain injuries. Plaintiff was required to ascend and descend the stairs in order

1 to perform her necessary duties. While descending the stairs, Plaintiff misstepped due to the uneven
2 rise and runs and lack of a handrail, resulting in Plaintiff falling and sustaining severe and
3 debilitating injuries and damages, as herein alleged.

4 11. Plaintiff is informed and believes, and based thereupon alleges, the Captain of the
5 M/Y OLGA knew, or should have known of the dangerous condition of the stairs due to prior visits
6 to Scrub Island, and that Plaintiff was not warned of, or provided with, alternative access by the
7 vessel to the kitchen at Scrub Island to obtain the spices in order to discharge her necessary duties.

8 12. Plaintiff is informed and believes, and based thereupon alleges, that since Plaintiff
9 was required to ascend and descend the stairs in order to discharge her necessary duties and the
10 condition of the stairs represented a dangerous condition due to the uneven rise and runs and lack
11 of a handrail, that the doctrine of unseaworthiness applies since the route to the kitchen that Plaintiff
12 was required to use by Defendants, and each of them, was an extension of the vessel which Plaintiff
13 was required to traverse in order to perform her duties for the vessel. Plaintiff is informed and
14 believes, and based thereupon alleges, that under the doctrine of unseaworthiness, Defendants, and
15 each of them, had a duty not to expose its seamen to an unseaworthy condition and the set of stairs
16 Plaintiff was required to use represented an unseaworthy condition of the vessel.

17 13. As a direct and proximate result of the unseaworthiness of the vessel of Defendants,
18 and each of them, as hereinabove alleged, Plaintiff, MICHELLE TROTTER, was hurt and injured
19 in her health, strength and activity, in all parts of her body, and sustained shock and injury to her
20 nervous system and person, all of which injuries have caused and continue to cause plaintiff great
21 mental, physical and nervous anxiety, and pain and suffering. Plaintiff, MICHELLE TROTTER, is
22 informed and believes and thereon alleges, that these injuries will result in some permanent disability
23 to plaintiff, all to her general damage, in an amount to be proven at time of trial.

24 14. As a further direct and proximate result of the unseaworthiness of the vessel of
25 Defendants, and each of them, as hereinabove alleged, Plaintiff, MICHELLE TROTTER, was
26 required to, and did, employ physicians, surgeons and therapists to treat and care for her and did
27 sustain expenses for such medical treatment and care, hospitalization, medicine, and for other and
28 further medical and incidental care, for which plaintiff has incurred liability in an amount as yet

1 unascertained. Plaintiff, MICHELLE TROTTER, prays leave of Court to amend and/or supplement
2 this Complaint to insert the actual and reasonable value of all medical and incidental expenses when
3 same have been ascertained, or to prove same at time of trial.

4 15. Plaintiff, MICHELLE TROTTER, is informed and believes, and based thereupon
5 alleges, that as a further direct and proximate result of the unseaworthiness of the vessel of
6 Defendants, and each of them, as hereinabove alleged, she will necessarily require additional medical
7 care, hospitalization, medicines, and other and further medical attention in the future and will incur
8 liability therefrom. Plaintiff, MICHELLE TROTTER, prays leave of Court to amend and/or
9 supplement this Complaint to insert the actual and reasonable value of all said additional medical
10 and incidental expenses when same have been ascertained, or to prove same at time of trial.

11 16. As a further direct and proximate result of the unseaworthiness of the vessel of
12 Defendants, and each of them, as hereinabove alleged, plaintiff, MICHELLE TROTTER, became
13 incapacitated and was prevented from following her usual occupation for an undetermined period
14 of time; and as a result thereof, said plaintiff suffered a loss of earnings and earning capacity and
15 ability and other financial losses in an undetermined amount. Plaintiff, MICHELLE TROTTER,
16 prays leave of Court to amend and/or supplement this Complaint to include the exact amount of said
17 loss of earnings and earning capacity and ability when ascertained, or to prove same at time of trial.

18 **SECOND CAUSE OF ACTION**
19 (Negligence)

20 17. Plaintiff realleges paragraphs 1 through 16, and incorporates the same as a part hereof
21 as though fully set forth herein.

22 18. Plaintiff is informed and believes that the direct and proximate cause of her injuries
23 and damages, as mentioned above, was the negligence of Defendants, and each of them, in requiring
24 Plaintiff to ascend and descent a set of stairs at Scrub Island to obtain necessary supplies for the
25 vessel that Defendants, knew, or should have known, were in a dangerous condition. The conduct
26 of Defendants, and each of them, in requiring Plaintiff to ascend and descend a set of stairs in a
27 dangerous condition as part of her employment duties aboard the M/Y OLGA was negligent and
28 careless, thereby causing injuries and damages to Plaintiff, as herein alleged.

1 19. As a direct and proximate result of the negligence and carelessness of Defendants, and
2 each of them, as hereinabove alleged, plaintiff, MICHELLE TROTTER, was hurt and injured in her
3 health, strength and activity, in all parts of her body, and sustained shock and injury to her
4 nervousness system and person, all of which injuries have caused and continue to cause Plaintiff
5 great mental, physical and nervous anxiety, and pain and suffering. Plaintiff, MICHELLE
6 TROTTER, is informed and believes, and based thereupon alleges, that these injuries will result in
7 some permanent disability to plaintiff, all to her general damage, in an amount to be proven at time
8 of trial.

9 20. As a further direct and proximate result of the negligence and carelessness of
10 Defendants, and each of them, as hereinabove alleged, Plaintiff, MICHELLE TROTTER, was
11 required to, and did, employ physicians, surgeons and therapists to treat and care for her and did
12 sustain expenses for such medical treatment and care, hospitalization, medicines and for other and
13 further medical and incidental care, for which plaintiff has incurred liability in an amount as yet
14 unascertained. Plaintiff, MICHELLE TROTTER, prays leave of Court to amend and/or supplement
15 this Complaint to insert the actual and reasonable value of all medical and incidental expenses when
16 same have been ascertained, or to prove same at time of trial.

17 21. Plaintiff, MICHELLE TROTTER, is informed and believes, and based thereupon
18 alleges, that as a further direct and proximate result of the negligence and carelessness of Defendants,
19 and each of them, as hereinabove alleged, she will necessarily require additional medical care,
20 hospitalization, medicines, and other and further medical attention in the future and will incur
21 liability therefrom. Plaintiff, MICHELLE TROTTER, prays leave of Court to amend and/or
22 supplement this Complaint to insert the actual and reasonable expenses when same have been
23 ascertained, or to prove same at time of trial.

24 22. As a further direct and proximate result of the negligence and carelessness of
25 Defendants, and each of them, as hereinabove alleged, plaintiff, MICHELLE TROTTER, became
26 incapacitated and was prevented from following her usual occupation for an undetermined period
27 of time; and as a result thereof, said plaintiff suffered a loss of earnings and earning capacity and
28 ability and other financial losses in an undetermined amount. Plaintiff, MICHELLE TROTTER,

1 prays leave of Court to amend and/or supplement this Complaint to include the exact amount of said
2 loss of earnings and earning capacity and ability when ascertained, or to prove same at time of trial.

3 **THIRD CAUSE OF ACTION**
4 **(Maintenance and Cure)**

5 23. Plaintiff realleges paragraphs 1 through 22, and incorporates the same as a part hereof
6 as though fully set forth herein.

7 24. On or about the above time and place, while Defendants' vessel was on navigable
8 waters, Plaintiff became injured while in the service of the vessel.

9 25. Upon Plaintiff's becoming injured, it became the duty of Defendants, and each of
10 them, to pay Plaintiff the expenses of her maintenance and cure and wages until Plaintiff reached
11 maximum possible cure, which Defendants, and each of them, have neglected to pay.

12 26. That by reason of Defendants refusal and failure to pay maintenance and cure,
13 Plaintiff has incurred damages, and has also incurred attorney's fees and costs, in an amount
14 presently unknown and Plaintiff is therefore entitled to attorney's fees and costs and interest thereon,
15 all in an amount to be proven at time of trial. Plaintiff is informed and believes, and based thereupon
16 alleged, that she will suffer further damages in an amount which is not known at this time, and she
17 prays leave to insert the same when fully ascertained.

18 27. Plaintiff is further informed and believes, and based thereupon alleges, that
19 Defendants failure and refusal to pay maintenance and cure was arbitrary, capricious, malicious,
20 willful, oppressive and therefore entitles plaintiff to an award of punitive damages and attorney's
21 fees and costs in an amount to be proven at time of trial.

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1 WHEREFORE, Plaintiff prays judgment against Defendants, and each of the, as follows:

2 1. For general damages, all in an amount to be proven at the time of trial;

3 2. For medical and related expenses, past, present and future, all in an amount to be

4 proven at the time of trial;

5 3. For loss of earnings or earning ability, past, present and future, all in an amount to be

6 proven at the time of trial;

7 4. For maintenance and cure, all in an amount to be proven at time of trial;

8 5. For attorney's fees, all in an amount to be proven at time of trial;

9 6. For exemplary and punitive damages, all in an amount to be proven at time of trial;

10 7. For a trial by jury pursuant to Rule 38, Federal Rules of Practice;

11 8. For costs of suit incurred herein; and

12 9. For such other and further relief as this Court deems just and proper.

13 Dated : November 19, 2014

LAW OFFICES OF FRIEDBERG & BUNGE

14 By: s/ THOMAS F. FRIEDBERG, ESQ.

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23 **DEMAND FOR JURY**

24 Plaintiff hereby demands a jury trial pursuant to Rule 38, of the Federal Rules of Practice.

25 Dated : November 19, 2014

LAW OFFICES OF FRIEDBERG & BUNGE

26 By: s/ THOMAS F. FRIEDBERG, ESQ.

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